

S.B.Criminal Misc. Petition No. 381/2006
(Brahmanand Vs. Smt. Sunita Sharma)

Date of order : 07.07.2006

HON'BLE MR.H.R.PANWAR,J.

Mr. Rajesh Soni for the petitioner.

Mr. Ravindra Acharya for the non-petitioner.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has assailed the order dated 04.03.2006 passed by Judicial Magistrate, Merta on an application filed by the non-petitioner under Section 125 Cr.P.C. During the pendency of the application,, the court below granted maintenance at the rate of Rs. 1000/- per month in favour of the non-petitioner.

I have heard learned counsel for the parties.

It has not been disputed that the non-petitioner is legally wedded wife of the petitioner. It has also not been disputed that after five years of the marriage, the non-petitioner suffered leg ailment for which she is undergoing treatment. It was alleged that the petitioner failed to maintain the non-petitioner and neglected her, even she has no independent source of income for her livelihood as also for her treatment.

The Court below, considering the material on record,

by the order impugned dated 04.3.2006 granted maintenance at the rate of Rs. 1000/- per month in favour of the non-petitioner from the date of application i.e. 29.8.2005.

Learned counsel for the petitioner submits that the maintenance ought to have been granted from the date of order and not from the date of application. Sub-section (2) of Section 125 Cr.P.C. provides that any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of application for maintenance or interim maintenance and expenses of proceedings, as the case may be.

In the instant case, the maintenance has been ordered by the court below from the date of application, and therefore, the order granting maintenance from the date of application is in conformity with the provisions of sub-section (2) of Section 125 Cr.P.C.

In Smt. Savita Sharma Vs. Shri Krishan Murari, RLR 1990 (1), 400, a Division Bench of this Court held that maintenance should be granted from the date of application keeping in view the fact that no interim maintenance was granted in that case during the pendency of the proceedings.

In the circumstances, therefore, it cannot be said that the order impugned would result in manifest injustice or abuse of process of any Court.

The criminal misc. petition is devoid of any force and is, therefore, dismissed. The interim order dated 29.3.2006 stands vacated.

(H.R.PANWAR), J.

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